



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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6/30/2022 4:49:09 PM

Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Secretary Of State

TITLE-SERIES: 153-13

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: EARLY VOTING IN-PERSON SATELLITE
PRECINCTS

CITE STATUTORY AUTHORITY: W. Va. Code § 3-3-2a(c)

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 07/31/2022 3:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

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PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

This rule establishes the procedures for the selection of early voting community voting locations.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

Following an opinion of the Attorney General, certain provisions in the rule are outdated and require revision. Specifically the use of the phrase "community voting location" in lieu of "satellite precinct", as well as the provision in section 3.5 granting authority to executive committees to veto a community voting location, which is no longer authorized by statute.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

N/a

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

N/a

C. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

N/a

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2022 Increase/Decrease (use "-")	2023 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			
Personal Services			
Current Expenses			
Repairs and Alterations			
Assets			
Other			
2. Estimated Total Revenues			

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

N/a

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Donald Kersey -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 153
LEGISLATIVE RULE
SECRETARY OF STATE

SERIES 13
EARLY VOTING IN-PERSON ~~SATELLITE PRECINCTS~~ COMMUNITY VOTING
LOCATIONS

§153-13-1. General.

1.1. Scope. -- This rule amends criteria to assure neutrality and security in the selection process for early voting in-person ~~satellite precincts~~ community voting locations and establishes processes and deadlines for establishing such precincts.

1.2. Authority. -- W. Va. Code § 3-3-2a(c).

1.3. Filing Date. -- ~~May 6, 2019.~~

1.4. Effective Date. -- ~~May 6, 2019.~~

1.5. Sunset Provision. -- This Rule shall terminate and have no further force or effect on ~~May 6, 2024~~ August 1, 2028.

§153-13-2. Definitions.

2.1. For the purposes of this rule:

2.1.1. "Broadcast" means announced or advertised on over-the-air, cable, or satellite television or radio.

2.1.2. "Clerk" means the Clerk of the County Commission or other official charged with the administration of elections.

2.1.3. "Early voting" means early in-person absentee voting as provided for in W. Va. Code §3-3-3.

2.1.4. "Permanent structure" means a building or permanent fixture not erected solely for the purpose of serving as a satellite location and specifically excludes mall kiosks, mobile vehicles, motor homes, or recreational vehicles.

2.1.5. "Published" means a Class 11-0 legal advertisement as defined in W. Va. State Code §59-3-2. For counties having more than one qualified newspapers weekly, the notice must be published in each of the qualified newspapers.

2.1.6. ~~"Satellite precinct"~~ "Community voting location or locations" means one or more locations for in-person early voting in addition to the primary location as provided for in W. Va. Code §3-3-2a.

§153-13-3. Early Voting Community Voting Location ~~Satellite Precinct~~ Selection.

3.1. No less than ~~one hundred twenty (120)~~ days prior to election day, the clerk shall submit a proposal for an early voting ~~satellite precinct or precincts~~ community voting location in writing to the County Commission for approval or disapproval.

3.2. The proposal submitted by the clerk shall include:

3.2.1. The proposed location or locations for early voting ~~satellite precincts~~ community voting locations:

3.2.1.a. The proposed location must be in a permanent structure, with preference given to public buildings, and capable of being secured during times when election officials are not present;

3.2.1.b. The proposed location must have secure access to the internet, or telephone access, for purposes of immediately crediting the voters vote.

3.2.2. Provisions for staffing the ~~satellite precinct~~ community voting locations including a minimum of two persons as provided for in W. Va. Code §3-3-2a(d)(4): *Provided*, That the two (2) persons may not be registered with the same political party affiliation or two (2) persons registered with no political party affiliation. The persons may be full-time employees of the county or temporary employees hired for the period of early voting or volunteers; and

3.2.3. Any other procedures necessary for the proper conduct of an election according to provisions of W. Va. Code §§3-1-1 *et seq.*, 3-3-2a and 3-3-3, and section five (5) of this rule, at the early voting ~~satellite location or~~ community voting locations.

3.3. In order to assure neutrality in the ~~satellite precinct~~ community voting location selection process:

3.3.1. ~~The clerk shall also submit to the county commission with the proposal for an early voting satellite precinct or precincts a duly notarized written agreement from the chairperson of the county executive committee of each of the two major political parties. The county executive committees of the two major political parties may nominate sites to be used as community voting locations during the early voting period pursuant to W. Va. Code § 3-3-2a(b)(3). Nominations under this rule shall be made by written request to the clerk delivered no later than 150 days prior to election day, and shall clearly list the address(es) and neutrality criteria for each proposed community voting location. Upon receipt of a written proposal, the county commission shall, at a public meeting, decide whether to add the proposed community voting locations prior to the notice deadline set forth in section 3.1 of this rule: Provided, That delinquent nominations shall not prohibit the county commission from considering the proposed community voting locations within the deadlines set forth by law and this rule.~~

3.3.2. The clerk shall submit to the county commission the basis for the neutrality of the proposal. Neutrality may be assured by taking into account all or part of the following factors:

3.3.2.a. Distance from the main early voting location;

3.3.2.b. Population centers of the county;

3.3.2.c. Historic voting turnout rates of the proposed location compared to the county as a whole;

3.3.2.d. Political party affiliation ratio of registered voters in the precinct of the proposed community voting location balanced against the affiliation ratio of the county as a whole or balanced against the affiliation ration of other proposed community voting locations.

3.4. The county commission, shall approve or disapprove the proposal submitted by the clerk no less than 90 days prior to election day. An early voting ~~satellite precinct~~ community voting location proposal

must be approved for each particular primary, general or special election and is only valid for the election for which it was approved.

~~3.5. If agreement cannot be reached among the county commission, county clerk and the chairperson of the county executive committee of each of the two major political parties, the proposal shall be considered void and early voting satellite precincts may not be authorized in the county for the election cycle. Any of the four entities—clerk, county commission, first party chair, or second party chair—has the right to veto any proposal.~~

§153-13-4. Crediting of Voter Record.

4.1. Any voter who votes at an early voting ~~satellite precinct~~ community voting location shall immediately be given credit in the uniform voter registration system, and the clerk shall take all necessary steps to prevent a voter from voting more than once. In ~~satellite precincts~~ community voting locations that do not have secure internet access available, the poll workers shall call the County Clerk's office, before allowing the voter to vote, to determine if the voter has already voted at another location, and to give immediate credit in the uniform voter registration system.

4.2. If internet access to the uniform voter registration system is temporarily interrupted, the voter may:

4.2.1. Wait until access has been reestablished; or

4.2.2. Go to another location to vote early; or

4.2.3. Vote a provisional ballot. The provisional ballot will not be counted unless it is confirmed at canvassing that the voter did not vote a second ballot.

4.3. W. Va. Code §3-9-17 makes it a misdemeanor for any person to vote more than once in the same election.

§153-13-5. Procedures for Conducting Early Voting at ~~Satellite Precincts~~ Community Voting Locations.

5.1. All election material and equipment used at any ~~satellite precinct~~ community voting location shall be prepared in the same manner as the equipment used during early voting at the primary location including, but not limited to:

5.1.1. Provisions for the security of ballots and other election material; and

5.1.2. Logistics and accuracy testing of voting equipment.

5.2. Counties using paper ballots or optical scan ballots must have copies of each ballot style at the early voting ~~satellite precinct~~ community voting location in numbers sufficient for the efficient conduct of early voting.

5.3. Each early voting ~~satellite precinct~~ community voting location must be open and operational in the same manner as the primary location for early voting.

5.4. Early voting at a ~~satellite precinct~~ community voting location must be available for a minimum of five (5) consecutive days during early in-person voting, but need not be available for the entire period of early in-person voting, beginning on thirteenth (13th) day before the election and continuing through the third (3rd) day before the election. A ~~satellite precinct~~ community voting location is not required to be open on Saturdays, so long as it is open for at least five (5) consecutive days.

5.5. If more than one ~~satellite precinct~~ community voting location location is authorized under W. Va. Code § 3-3-2a(b), each precinct may be open on a rotating basis for a period of five (5) consecutive days or more. Each ~~precinct~~ community voting location must be open for an equal number of voting days

and the same number of hours per day, except for ~~satellite-precinct~~ community voting locations open on Saturdays which hours shall be 9:00 a.m. to 5:00 p.m. For purposes of calculating the total number of days, Sundays are not counted.

§153-13-6. Security.

6.1. Security of both used and unused ballots, any voting equipment and supplies and all poll books must be maintained in the same manner as at the primary early voting location according to provisions of W. Va. Code §§3-1-1 *et seq.*, 3-3-2a(d)(2) and 3-3-3.

6.2. The official in charge of conducting early voting must provide a means by which the ballot boxes, supplies and voting equipment are secured from tampering. Ballot boxes, supplies and machines, during periods when voting is not taking place, must be locked and secured in such a way so that no person other than the officials or employees of the official designated to conduct early voting or members of the board of ballot commissioners may enter the area or room set aside for voting or access the voting equipment.

6.3. At the end of voting hours each day during early voting, the two (2) ~~satellite-precinct~~ community voting location employees will record the number of the last ballot used and will record the number of votes recorded on voting equipment.

6.3.1. In counties using Direct Recording Electronic (DRE) voting system, the Personalized Electronic Ballots (PEB) shall be secured in a receptacle and sealed with a numbered seal. The seal number is to be recorded with the record of the public count from the machine.

6.3.2. In counties using ExpressVote voting system, the unused ballots shall be secured in a receptacle and sealed with two (2) locks with different keys, a numbered seal or security tape.

6.3.2.a. If locks are used, each ~~satellite-precinct~~ community voting location employee shall keep one (1) key for one (1) lock so that the box cannot be open without both employees present.

6.3.2.b. If a numbered seal is used, the seal number is to be recorded with the record of the public count from the precinct scanner. If security tape is used, two (2) ~~satellite-precinct~~ community voting location employees shall sign their names across the tape.

6.4. At the beginning of voting hours the next day, the two ~~satellite-precinct~~ community voting location employees will record the number of the next ballot available and will check the number of votes recorded on the voting equipment. The seal(s) or security tape shall be inspected to assure there has been no tampering. Then the seal(s) shall be broken and the materials removed for voting. Any discrepancy must be immediately reported to the Clerk and no voting may take place at the ~~satellite-precinct~~ community voting location until the discrepancy is resolved.

6.5. Ballot boxes and machines may not be removed from the ~~satellite-precinct location~~ community voting location except under the supervision of the officials or employees of the official designated to conduct early voting.

§153-13-7. Ballot disposition and counting.

7.1. Ballots shall be counted in the manner prescribed by W. Va. Code §3-3-8.

7.2. For counties using paper ballots, the ballot boxes shall be sealed and transported by two ~~satellite location~~ community voting location workers, of differing political affiliation, to the main early voting location before being counted.

7.3. For counties using optical scan systems, direct recording or ExpressVote equipment, the ballots and machine memory device(s) shall be sealed and transported by the two (2) ~~satellite location~~ community voting location workers, of differing political affiliation, to the main early voting location before being counted.

7.4. Provisional ballots will be placed in a sealed bag and transported to the main early voting location for disposition in accordance with W. Va. Code § 3-3-8(d)

§153-13-8. Public Notice.

8.1. Not later than seven (7) calendar days before the start of early voting, the county commission shall cause a notice to be broadcast in a manner sufficient to reach a majority of citizens in the county as determined by the County Commission or published as defined in section two of this rule, and placed on the county's website (if applicable). The notice placed on the county's website must remain on the website until the close of the early voting period. All notices shall state the location or locations and dates and hours of operation for each early voting ~~satellite precinct~~ community voting location.